

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1146 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

BHAGABHAI C PRAJAPATI

Versus

PURSOTTAM C MISTRY

Appearance:

MR DD VYAS for Petitioner

MR. UDAY BHATT, AGP for Respondent No. 3

RESPONDENTS NO. 1 AND 2 SERVED

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 28/02/96

ORAL JUDGEMENT

1. The petitioner original defendant No.1 is aggrieved by
judgment and order dated 30th March, 1995 passed by Civil
Judge (J.D.), Gandevi, whereby he has rejected the application
preferred by Inspecting Officer (Court fees) under Section 12
of the Bombay Court Fees Act, 1959.

2. It appears that in the suit instituted by respondent No.1 plaintiff, it was his case that the plaintiff and the defendants belong to the same family and that he has filed the suit to get his 1/3 share in the properties. It was his further claim that the value of 1/3 share would be Rs. 30,000/- and accordingly he has paid the court fee of Rs. 1,200/- thereon. The Inspecting Officer has however filed the report at Exhibit-139 and has stated that looking to the extent of property, area, locality, etc. along with the escalation of prices of immovable property, the properties in question would not be worth less than Rs.6 lacs and if the plaintiff is entitled to 1/3 share therein, he shall have to pay the court fee on the amount of Rs. 2 lacs and that court fee payable was therefore insufficient or deficit. Such reference made by the Court Fee Inspector is very cursorily rejected by the impugned order without following the procedure prescribed by Section 12 of Bombay Court Fees Act. The learned judge was expected to read a valid provision of Section 12 (4) of the said Act and for some cogent and convincing reasons, he had to record a finding as to why the Court Fee Inspector was wrong and as to how plaintiff was right in assessment of the value of the property. Unfortunately, the learned trial judge has not applied his mind at all to the provision of the Act, has not given any reason whatsoever, which can be said to be legal and valid for rejecting the report of the Court Fee Inspector. The order of the learned trial judge is required to be quashed and set aside and is hereby quashed and set aside with direction to him to decide the report of Court Fee Inspector at Exhibit 139 afresh in accordance with law more particularly Section 12 (4) and (5) of the Bombay Court Fees Act, 1959. Rule is made absolute accordingly.
